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FISCAL IMPACT STATEMENT

LS 6230

BILL NUMBER: HB 1011

NOTE PREPARED: Jan 31, 2012

BILL AMENDED: Jan 27, 2012

SUBJECT: Various Corrections Matters.

FIRST AUTHOR: Rep. Foley

FIRST SPONSOR: Sen. Bray

BILL STATUS: As Passed House

FUNDS AFFECTED: X **GENERAL**
X **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

- A. *Incentive and Disincentive Program* – It requires the Department of Correction (DOC) to: (1) determine the average daily marginal cost of incarcerating an offender; (2) determine the average length of stay for certain Class D felony offenders committed to the department; and (3) administer an incentive and disincentive program under which counties are rewarded for reducing the number of Class D felony offenders committed to the department and are penalized for increasing the number.
- B. *Probation Improvement Fund* – It establishes the Probation Improvement Fund administered by the Judicial Conference to award grants based on the recommendation by DOC to: (1) county probation departments that supervise persons convicted of a felony to promote the adoption of certain best practices to improve probation administration and services and reduce probation revocations; and (2) counties that supervise persons who have been convicted of a felony to consolidate and improve the efficiency of probation administration and services and community corrections programs. It provides that the Probation Improvement Fund consists of appropriations from the General Assembly and funds from savings realized by DOC due to fewer Class D felons being committed to DOC.
- C. *Forensic Addiction Fund* – It creates the Forensic Addiction Fund to create a funding source for grants to probation departments and community corrections programs to increase substance abuse treatment access for individuals on probation or in a community corrections program. It requires the Judicial Conference of Indiana to administer the fund.
- D. *Credit-Restricted Felons* – It requires a sentencing court to inform DOC if the person sentenced is a credit-restricted felon. It requires a court that determines that a person sentenced is a credit-restricted felon to state in the sentencing order and the abstract of judgment that the person is a credit-restricted

- felon. It requires the Judicial Conference to adopt rules concerning swift and certain sanctions that a probation officer may use in supervising persons on probation.
- E. *Swift and Certain Sanctions* – It provides procedures for a person on probation to be sanctioned by a probation officer.
 - F. *Credit Time Earned by Certain Offenders* – It requires that credit time earned by certain offenders shall be reduced to the extent that application of the credit time would result in postconviction release or a community transition program assignment in less than 45 days after the person earns the credit time.
 - G. *Automated Victim Notification System* – It requires DOC to: (1) establish an automated victim notification system; and (2) notify a registered crime victim of certain changes affecting the committed offender who committed the crime against the victim. It specifies when DOC shall make certain victim notifications.
 - H. *Sentencing Order and Abstract of Judgment* – It provides that if a court imposes a felony sentence that involves a commitment to DOC, the court shall state certain information in the sentencing order and abstract of judgment.
 - I. *Class D Felony Convictions* – It requires the Division of State Court Administration to submit a report to DOC detailing the number of Class D felony convictions for each county.
 - J. *County Offender Fund* – It requires each county to establish a County Offender Fund.

(The introduced version of this bill was prepared by the Criminal Code Evaluation Commission.)

Effective Date: (Amended) Upon passage; July 1, 2012; July 1, 2013.

Explanation of State Expenditures: (Revised) *Incentive and Disincentive Program* – This bill uses Class D felony commitments between CY 2006 and CY 2010 to develop a series of baseline averages for DOC to use to evaluate whether counties are committing proportionately more Class D felons to DOC facilities.

Counties which show a reduction in commitments in future years below their baseline will receive an incentive grant. Those who commit more than either ten or more additional offenders or 5% more Class D felons than the baseline will have a portion of the money that these counties would have received from the state's County Jail Misdemeanant Housing Fund withheld. Counties committing fewer than ten or less than 5% above their baseline will be held harmless.

An additional grant will also be available based on the proportion of the DOC commitments to the total Class D felony convictions in each county. Money for these grants will come from the savings realized from having fewer offenders in DOC facilities and not from any new appropriations. The first year that this grant would be available is 2014. Conviction data is not currently available from counties, so this bill requires that the Division of State Court Administration report this statistic in future years in the annual report it publishes.

Since this bill relies on future data and data that is currently not available in published form, the following table shows estimates of how counties could be affected with these formulas by using 2006 through 2009 as the baseline and 2010 as the first year to compare with the baseline.

State Impact and Effect on Counties with Incentive and Disincentive Grants				
	27 Counties with Rehabilitation Incentive Grants	32 Counties with Reduction in County Misdemeanant Housing Grants	33 Counties Held Harmless	Indeterminable Number of Counties Receiving Local Corrections Incentive Grant
(New Savings)/ Expenditures	\$131,642	(\$372,563)	0	\$65,821

(Revised) Additional Details-

(A) *Local Rehabilitation Incentive Formula* – This bill requires the incentives to be based on the average number of commitments to DOC for Class D felony offenders between CY 2008 through CY 2011. The grant award would be based on the following formula.

Local Rehabilitation Incentive Formula									
Baseline Average Between 2008 and 2011	-	Class D Felony Commits in Future Calendar Year	=	If Difference Is Positive Multiply by Marginal Cost and Length of Stay	X	Average Length of Stay of Class D Felony Offender with an Executed Sentence of less than One Year	X	The Average Daily Marginal Cost of Incarcerating an Offender	X 50%

Since neither 2011 nor 2012 information is available, LSA used commitments for 2006, 2007, 2008, and 2009 to establish a baseline and 2010 commitments to estimate the effects this bill would have on counties.

LSA used DOC release data for CY 2010 to estimate the average length of stay of Class D felony offenders with an executed sentence of less than one year. The average length of stay for Class D felons who have a sentence of one year or less was 63.5 days.

The State Budget Agency estimates the current average daily marginal cost to be \$9.09.

Medical care (variable rate)		Food (3 meals)		Clothing and Hygiene		Total Daily Costs
\$4.60	+	\$3.49	+	\$1.00	=	\$9.09

Using the baseline established by commitments between 2006 and 2009 and comparing the baseline to 2010 commitments, LSA estimates that 27 counties would receive an incentive grant because their average baseline commitments between 2006 and 2009 were less than commitments in 2010. The total amount awarded would be \$131,642. The incentive award would be paid from the funds remaining from the marginal savings realized by DOC from counties committing fewer offenders to DOC facilities.

(B) *Disincentive Formula* – The disincentive penalty is determined by the difference between the four-year baseline and the current year commitments. If the amount in the most recent year is greater than the baseline average by either ten offenders or more than a 5% increase, then a certain amount would be withheld from the county from the County Misdemeanant Housing Fund. Using the four-year baseline between 2006 and 2009 and the commitments in 2010, LSA estimates that 32 counties would have portions of the county misdemeanor funding reduced. The total reduction is estimated to be \$372,563. The total appropriation for the County Jail Misdemeanant Fund in FY 2012 was \$4.28 M.

Formula to Determine the Amount Withheld from County’s Misdemeanant Fund (IC 11-12-6-3)										
Class D Felony Commits in Calendar Years after Baseline	-	Baseline Average Between 2008 and 2011	=	If Difference Is Positive Multiply by Marginal Cost and Length of Stay	X	Average Length of Stay of Class D Felony Offender with an Executed Sentence of less than One Year	X	The Average Daily Marginal Cost of Incarcerating an Offender	X	50%

(C) *Held Harmless* – Commitment data for 2006 to 2009 was used to estimate the counties with future commitments greater than the average baseline, which would be held harmless by the formula (neither receiving rehabilitation incentive awards nor having money withheld from their County Misdemeanant Housing Account) if either of these two conditions occurred: (1) if the difference between the baseline average and the next year commitments is fewer than ten or (2) if the quotient of dividing most recent year of commitments by the baseline average is less than 105%. There were 33 counties in this category.

(D) *Local Corrections Incentive Grant* – The money from the Local Corrections Incentive Grant would be paid out of 50% of the marginal savings realized by DOC as a result of counties committing fewer Class D felony offenders to DOC after the Local Rehabilitation Incentive Grants have been distributed. Grants under this section would be distributed based on a formula that calculates the average number of Class D felony commitments to DOC divided by the average number of Class D felony convictions statewide. Using 2010 statistics, an estimated \$131,642 would be available for distributing to counties. Since conviction information is not available, LSA cannot estimate how counties would be affected.

(Revised) *Reporting Felony Convictions* – The Division of State Court Administration would be required to report annually the number of offenders who were convicted of Class D felonies in each county. The Division would likely incur added costs for reprogramming its reporting application for special collection efforts. There would also be additional training of court staff at the trial level across Indiana and publication and distribution of training manuals. A specific cost is currently not available.

(Revised) *Probation Improvement Fund* – The Indiana Judicial Conference would administer the nonreverting Probation Improvement Fund, and the Department of Correction (DOC) can make recommendations to the Indiana Judicial Conference for grant awards. The expenses for administering this fund shall be paid from the fund. The Judicial Conference is to award the grant contingent on the ability of the county probation department to demonstrate a minimal level of coordination with other offender supervision agencies operating in the same county, including community corrections programs, parole authorities, and other probation agencies. This fund includes money from donations, gifts, and money received from any other source including

transfers from other funds or accounts, appropriations from the General Assembly, and 25% of any marginal savings realized by the Department of Correction as a result of the counties committing fewer Class D felony offenders to DOC. The estimated amount from the marginal savings would be \$65,821.

Forensic Addiction Fund – Sources of funds for the new nonreverting Forensic Addiction Fund would include appropriations from the General Assembly and donations, gifts, and money received from any other source, including transfers from other funds or accounts. There is no appropriation included in this bill.

The Indiana Judicial Center would be charged with distributing the money in this fund. The Judicial Center would determine the amount of the grant awarded to a program and adopt rules to implement this new fund.

Mental health and substance abuse counseling services provided by these grants must be contracted for with a certified mental health or addiction provider as determined by the Division of Mental Health and Addiction.

Automated Victim Notification System – DOC staff report that this can be implemented within its existing level of resources.

Credit Time Earned by Certain Offenders – This provision could slightly reduce the need for prison beds. Under current law, any offender who receives credit time that would make them immediately eligible for release from prison, must spend an additional 45 days in prison before being released. This bill would restrict this 45-day wait to offenders who have been sentenced for violent crimes (IC 35-42), incest, and promoting prostitution.

DOC officials indicate that this bill especially could affect shorter-term offenders who may enroll in a substance abuse class and not be able to receive full credit to be released early.

Swift and Certain Sanctions – The Indiana Judicial Center would be charged with prescribing minimum standards for a schedule of probation incentives and violation sanctions and qualifications for probation officers to administer probation violation sanctions. The Center staff would likely conduct a series of public hearings prior to adopting these standards.

Explanation of State Revenues:

Explanation of Local Expenditures: *Probation Improvement Fund* – County probation departments that supervise felony offenders would be eligible to receive money from the Probation Improvement Fund. Departments would have to submit an application on a form that is prescribed by the Indiana Judicial Conference.

Credit-Restricted Felons – Courts should be able to specify that an offender is a credit-restricted felon in the sentencing order and the abstract of judgment with current resources.

Credit-restricted felons have been committed to DOC for one of the following:

- Child molesting involving sexual intercourse or deviate sexual conduct if the offense is committed by a person at least 21 years of age and the victim is less than 12 years of age; or child molesting resulting in serious bodily injury or death; or

- Murder if the person killed the victim while committing or attempting to commit child molesting; the victim was the victim of a sex crime for which the person was convicted; or the victim of the murder was listed by the state or known by the person to be a witness against the person in a prosecution for a sex crime and the person committed the murder with the intent to prevent the person from testifying.

Credit-restricted felons were committed from 34 counties between 2009 and 2011

Credit-Restricted Felons Committed to DOC by CY			
<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
5	19	41	40

Credit-restricted felons receive one day credit off of their time in prison for each 6 days they serve with good conduct.

Sentencing Orders and Abstract of Judgment – Courts in 88 of Indiana’s 92 counties will need to complete 10 or fewer of these sentencing orders each week, based on commitments to DOC in CY 2010. Depending on the type of office automation available, most counties should be able to complete this requirement with existing resources.

LSA examined the number of offenders committed to DOC in CY 2010 by county.

Average Number of Offenders Committed to DOC each Week in CY 2010	Counties Committing
Fewer than 5	81
Between 5 and 10	7
More than 10	3
82 per week	Marion County

Probation Violations – Some counties will have to process probation violations at a faster rate rather than allowing probationers who violate their court orders to remain in jail for longer than 15 days.

Explanation of Local Revenues: (Revised) *Disincentive Program* – Using Class D felony commitment statistics between 2006 and 2010, LSA estimates that 32 counties could lose \$372,563 from the state based on the estimates using their commitments in 2010 that were greater than the baseline average between 2006 and 2009.

(Revised) *County Offender Fund* – Each county would be required to create a county offender fund to redistribute incentives to defray the cost of housing offenders in jail, probation programs, work release programs, community corrections programs, problem-solving courts, and substance abuse treatment programs.

(Revised) *Financial Responsibility for Participation in Certain Programs* – If a person or the child of a person participates in a treatment program, educational class or rehabilitative service provided by a probation department, the person could be responsible for any costs. Any addition reimbursements would be deposited

into either the county or local supplement probation services fund.

State Agencies Affected: Department of Correction; Indiana Judicial Conference; Division of Mental Health and Addiction; Division of State Court Administration

Local Agencies Affected: Trial courts operating probation offices; Community correction agencies.

Information Sources: Division of State Court Administration; Department of Correction.

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